

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-32 are now pending in this application. Claims 17 and 18 have been withdrawn from consideration.

Claim Objection

Claim 2 is objected to for containing an informality. Applicant respectfully submits that the amendments to the claims render this objection moot. Reconsideration and withdrawal of this objection is respectfully requested.

Rejection under 35 U.S.C. § 102

Claims 1-5, 12-16, and 19-32 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,545,178 to Kensey *et al.* (hereafter “Kensey ‘178”). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Kensey ‘178 discloses a system for closing a percutaneous puncture that includes a plunger 74 which is depressed to advance a tamping member 84, holding member 40, a sealing member 36, and an anchoring member 38 so that the anchoring member 38 is deployed within a vessel. See Kensey ‘178 at col. 10, line 57, to col. 11, line 4. After the

anchoring member 38 has been pulled into place, the tamping member 84 is grasped and used to tamp the sealing member 36. See Kensey '178 at col. 11, lines 5-18.

The Office argues on pages 2-3 of the Office Action that the plunger 74 and the tamping member 84 of Kensey '178 provide an actuator that is operable in a first mode and a second mode because the plunger 74 is used in a first mode and the tamping member 84 is used in a second mode. However, the plunger 74 and the tamping member 84 of Kensey '178 do not provide an actuator that includes an actuator portion that is configured to be directly contacted by the user in both the first and second modes, as recited in amended claims 1 and 22. Claims 2-5, 12-16, 19-21, and 23-32 depend from claims 1 and 22.

For example, each of the plunger 74 and the tamping member 84 of Kensey '178 are not directly contacted by a user in both the first and second modes of the device of Kensey '178, as recited in claims 1 and 22. Instead, Kensey '178 discloses that only the plunger 74 is directly contacted by a user in a first mode in which an anchoring member 38 is deployed within a vessel (see Kensey '178 at col. 10, line 57, to col. 11, line 4), but without contacting the tamping member 84 directly, and then (after the plunger 74 has been removed) the tamping member 84 is grasped and used to tamp a sealing member 36 in a second mode (see Kensey '178 at col. 11, lines 5-18), without contacting the plunger 74 directly. In fact, Figures 3 and 4 of Kensey '178 show the plunger 74 as being removed at that stage. Further, Figure 2 of Kensey '178 shows that the tamping member 84 is inaccessible and cannot be directly contacted by a user during a first mode of the device of Kensey '178 because the tamping member 84 is enclosed within a carrier tube 64.

As a result, Kensey '178 does not anticipate claims 1-5, 12-16, and 19-32 because Kensey '178 does not disclose all of the features of claims 1 and 22. Reconsideration and withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kensey '178 in view of U.S. Pub. No. 2001/0003158 to Kensey *et al.* (hereafter "Kensey '158"). This rejection is respectfully traversed. Kensey '158 fails to

remedy the deficiencies of Kensey '178 discussed above in regard to independent claim 1, from which claims 10 and 11 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Allowable Subject Matter

Applicant gratefully acknowledges the indication that claims 6-9 include allowable subject matter.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date October 26, 2010

By Glenn Law

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4011
Facsimile: (202) 672-5399

Glenn Law
Attorney for Applicant
Registration No. 34,371

Kevin L. McHenry
Attorney for Applicant
Registration No. 62,582